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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte

Summary

The present report, the first annual report to be submitted by a mandate holder, was prepared in accordance with Human Rights Council resolution 24/20, in which the Council decided to establish the mandate of Independent Expert on the enjoyment of all human rights by older persons.

In the report, the Independent Expert describes the activities undertaken since taking office on 2 June 2014 and her views about the foundations and context of the mandate, as well as some preliminary considerations that will inform her work during the mandate.

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I. Introduction

1. The present report is submitted by the first Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, to the Human Rights Council pursuant to its resolution 24/20 of 27 September 2013. In the report, the Independent Expert describes the activities undertaken from 2 June to 28 July 2014, and provides her preliminary considerations concerning the foundation and context of the mandate, as well as some considerations that will inform her work during the mandate.

II. Mandate-related activities

2. Since assuming her functions on 2 June 2014, the Independent Expert has engaged in consultations with a large number of experts and civil society organizations, exchanging views about priorities and strategies for fulfilling the mandate, including HelpAge and the Centro Latinoamericano de Políticas Económicas y Sociales of the Pontifical Catholic University of Chile.

3. On 2 and 3 June 2014, the Independent Expert addressed the International Association of Universities of the elderly in Toulouse, France. She furthermore accepted an invitation, on 10 July 2014, to share her views and expertise on pension reform in Chile with the Presidential Commission for the Study of Social Security Reform.

4. As part of the mandate, the Independent Expert was requested to work in close coordination, while avoiding unnecessary duplication, with the Open-ended Working Group on Ageing. At the time of submission, the Independent Expert had confirmed her participation in the upcoming fifth session of the Working Group, scheduled for 30 July to 1 August 2014 in New York. The Working Group will, inter alia, discuss measures to strengthen the promotion and protection of the rights of older persons, which are currently not addressed sufficiently, in particular in the areas of care for older persons, violence and abuse against older persons, and legal and financial issues in relation to the planning for end-of-life care. The Independent Expert will moderate a panel on recent developments. The Working Group will also hold a dialogue on how to strengthen the rights of older persons through enhanced implementation of the Madrid International Plan of Action on Ageing, and discuss the post-2015 development agenda and older persons.

5. Pursuant to Human Rights Council resolution 24/25, the 2014 Social Forum focused on the rights of older persons, including best practices in this regard. While the Forum, which was held from 1 to 3 April 2014, was held before the appointment of the Independent Expert, the importance of the mandate and the future activities of the mandate holder permeated the deliberations. The Office of the United Nations High Commissioner for Human Rights (OHCHR) participated in a number of panel discussions, in particular in the discussion on the theme "the universal human rights system: new opportunities for participation", at which it informed the participants that the Independent Expert could help to advance international standards on older persons, and would aim to (a) assess existing laws; (b) investigate the views of stakeholders; and (c) take a gender/disability perspective.

III. Foundations of the mandate

A. Background

6. The world is undergoing an unprecedented demographic transformation towards an ageing population. Estimates indicate that the number of elderly persons will increase from 600 million to 1.2 billion by 2025. By 2050, this age group is expected to reach 2 billion, approximately equivalent to the global population youth.

7. In the light of these projections, several international organizations have stressed the need to address the significant challenges posed by global ageing. In this context, the different situations imposed by the heterogeneity of ageing and specific problems in different cultures of the world should be borne in mind, including those associated with healthy, ill, terminal, non-disabled and elderly persons with disabilities, whether physical or cognitive, as well as the care needs and ethical issues posed for each of these groups. In addition, this sociodemographic scenario demands the protection of the rights of older persons at the national, regional and global levels, the development of public institutions, the visibility of the issue of old age and ageing, the inclusion of seniors, their health care, and strengthening social services, among others.

B. Scope of the mandate

8. In its resolution 24/20, the Human Rights Council established the mandate of the Independent Expert on the enjoyment of all human rights by older persons, to assess the implementation of existing international instruments with regard to older persons while identifying both best practices in the implementation of existing law related to the promotion and protection of the rights of older persons and gaps in the implementation of existing law.

9. As part of the mandate, the Independent Expert has also been tasked to assess the human rights implications of the implementation of the Madrid International Plan of Action on Ageing.

10. Operationally, in its resolution 24/20, the Human Rights Council specified that the Independent Expert should discharge the mandate by taking into account the views of stakeholders, including States, relevant regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions, and by integrating a gender and disability perspective into her work, and to pay particular attention to older women, persons with disabilities, persons of African descent, individuals belonging to indigenous peoples, persons belonging to national or ethnic, religious and linguistic minorities, rural persons, persons living on the streets, and refugees, among other groups.

11. The Council also requested the Independent Expert to raise awareness of the challenges faced in the realization of all human rights by older persons, and to ensure that older persons receive information about those rights, as well as to work in cooperation with States in order to foster the implementation of measures that contribute to the promotion and protection of the rights of older persons. The Council also called upon the Independent Expert to work in close coordination, while avoiding unnecessary duplication, with the Open-ended Working Group on Ageing, other special procedures and subsidiary organs of the Council, relevant United Nations bodies and the treaty bodies.

12. The Human Rights Council further requested the Independent Expert to report annually to the Council with a view to presenting a comprehensive report at its thirty-third session.

C. Legislative context

13. In 2010, the independent expert on the question of human rights and extreme poverty dedicated her annual report to the role that social protection systems play in reducing extreme poverty and in contributing to the realization of human rights of older persons.[1]

14. In its resolution 15/22, the Human Rights Council requested the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to prepare a thematic study on the realization of the right to health of older persons. On the basis of that study,[2] a panel discussion was held by the Council at its eighteenth session, in September 2011, on the right to health of older persons, focusing on increasing challenges that older persons face and on an opportunity to identify good practices and possible measures.

15. Also in 2011, OHCHR contributed to the report of the Secretary-General submitted to the General Assembly on the follow-up to the Second World Assembly on Ageing.[3] A questionnaire was sent to States and stakeholders soliciting observations and information on existing legislation, policies and programmes related to various human rights issues related to older persons. The report contains an overview of some of the challenges faced by older persons in the enjoyment of their rights and outlines examples of government responses to those challenges, including through an illustrative collection of legislation, policies and programmes. It also underlines four critical human rights issues for older persons: discrimination; poverty; lack of special measures, services and facilities; and violence and abuse.

16. In 2012, in her annual report to the Economic and Social Council, the High Commissioner focused on the human rights of older persons.[4] In the report, she provided an overview of existing international instruments and the gaps in the international protection regime, particularly focusing on areas such as age discrimination, legal capacity and equal recognition before the law, long-term care, violence and abuse, access to productive resources, work and food, social protection and the right to social security, the right to health and end-of-life care, disabilities, older persons in prison, and access to justice. The High Commissioner recommended, inter alia, the creation of a new special procedures mandate.

17. Pursuant to Human Rights Council resolution 21/23, OHCHR organized a public consultation on the promotion and protection of the human rights of older persons in April 2013, in order to receive information and to share good practices on the matter. A summary report was prepared thereon and submitted to the Human Rights Council at its twenty-fourth session.[5] The conclusion reached at the consultation was that, while most international human rights instruments were applicable to all age groups, including older persons, a number of human rights issues particularly relevant to older persons had not been given sufficient attention either in the wording of existing human rights instruments or in the practice of human rights bodies and mechanisms.

18. The Human Rights Council subsequently adopted resolution 24/20, in September 2013, thereby establishing the mandate of the Independent Expert.

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[1] See A/HRC/14/31.
[2] A/HRC/18/37.
[3] A/67/188.
[4] E/2012/51.
[5] A/HRC/24/25.

D. Global context

19. In 2002, the Second World Assembly on Ageing adopted the Madrid International Plan of Action on Ageing to respond to the opportunities and challenges of population ageing in the twenty-first century. The Plan of Action was preceded by the Vienna International Plan of Action on Ageing, which was adopted at the First World Assembly on Ageing, held in Vienna in 1982 and which was subsequently endorsed by the General Assembly.

20. The Madrid International Plan of Action on Ageing requires States to take measures to address ageing in order to achieve a society for all ages. It also calls for the mainstreaming of ageing into national and global development agendas, and contains recommendations for action focused on three priority areas, namely development, health and well-being, and enabling and supportive environments, which are divided into specific issues, objectives and actions.

21. The Independent Expert has been mandated to assess the human rights implications of its implementation. In this context, she notes that the Secretary-General, in his report on further Implementation of the Madrid International Plan of Action on Ageing, outlined impediments to its implementation, including the lack of financial and human resources, lack of political focus and will, and differing national and regional perceptions of old age issues, which translate into different policy approaches, as well as emerging views and approaches.[6]

22. In its resolution 65/182 on the follow-up to the Second World Assembly on Ageing, the General Assembly established the Open-ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons by considering the existing international framework of the human rights of older persons and identifying possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.

23. As mentioned above, the Independent Expert will work in close coordination with the Open-ended Working Group, while avoiding unnecessary duplication. In this regard, it is important to note the difference in the mandates of the Independent Expert and the Open-ended Working Group. While the latter is mandated to consider the existing international framework of the human rights of older persons to identify possible gaps and to assess how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures, the Independent Expert is entrusted to assess the implementation of the existing law and to identify best practices and gaps. The comprehensive report that the Independent Expert has been requested to prepare for the Human Rights Council at its thirty-third session will be brought to the attention of the Working Group, in accordance with Council resolution 24/20.

E. International standards and initiatives

24. At the international level, there are policies, standards and mechanisms aimed at protecting and promoting the rights of older persons, either in the form of generic or specific provisions, especially in the field of international labour law, as well as international and human rights law. This leads to a context of regulatory dispersion (rather than "legal gap" or "lack of regulation"), whereby the rights of older persons lack systematic protection.

[6] E/CN.5/2014/4.

25. Although there is no specific international human rights instrument devoted to older persons, most human rights treaties contain implicit obligations towards them. Explicit references to age as a ground of discrimination, though rare, can be found in more recent human rights treaties, such as article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention on the Rights of Persons with Disabilities contains various references to older persons (in article 13.1, on access to justice, article 16 on age-sensitive protection services, article 25 (b) on health, and article 28.2 (b) on an adequate standard of living and social protection). The Convention on the Elimination of All Forms of Discrimination against Women includes a reference to old age in relation to discrimination in the enjoyment of the right to social security (article 11.1 (e)).

26. The treaty bodies have considered the application of their respective treaties to older persons. The Committee on Economic, Social and Cultural Rights issued general comment No. 6 on the economic, social and cultural rights of older persons, while the Committee on the Elimination of Discrimination against Women made general recommendation No. 27 on the issue of older women and the protection of their human rights. The Committee on Economic, Social and Cultural Rights also referred to the rights of older persons in its general comment No. 19 on the right to social security (considering old age one of the branches to be covered by social security systems), and general comment No. 20, on non-discrimination in economic, social and cultural rights (which prohibits age as a ground for discrimination).

27. A number of regional human rights treaties also contain provisions on the rights of older people, namely article 17 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights (Protocol of San Salvador); articles 46 and 47 of the Andean Charter for the Promotion and Protection of Human Rights; article 25 of the Charter of Fundamental Rights of the European Union; article 12 of the revised European Social Charter; and article 18 of the African Charter on Human and Peoples' Rights.

28. At the international level, a number of non-binding instruments recognize older persons as a group, such as the Madrid International Plan of Action on Ageing of 2002 and the Vienna International Plan of Action on Ageing of 1982, as well as the United Nations Principles for Older Persons, adopted by the General Assembly in its resolution 46/91. In the latter text, the Assembly encouraged Governments to incorporate the 18 principles into their national programmes in order to promote the independence, participation, care, self-fulfilment and dignity of older persons.

29. The International Labour Organization has developed a number of recommendations addressing the situation of older workers, including Invalidity, Old-Age and Survivor's Benefits Recommendation No. 131 (1967), Older Workers Recommendation No. 162 (1980) and Termination of Employment Recommendation No. 166 (1982).

30. A comprehensive overview of existing international instruments relating to the human rights of older persons can be found in the compilation of the Open-ended Working Group on Ageing of 11 July 2013, prepared by OHCHR,[7] and in the OHCHR analytical outcome paper on normative standards in international human rights law in relation to older persons of August 2012.

31. The lack of a comprehensive and integrated international legal instrument to promote and protect the rights and dignity of the elderly has significant practical implications, given that:

[7] Available at http://social.un.org/ageing-working-group/documents/fourth/compilation.pdf.

(a) Existing regulations do not cohere, let alone conceptualize, regulatory principles to guide public action and policies of Governments;

(b) General human rights standards do not consider the recognition of third-generation specific rights in favour of elderly adults;

(c) It is difficult to clarify the obligations of States with respect to older persons;

(d) Procedures for monitoring human rights treaties generally ignore older persons;

(e) Current instruments do not make the issues of ageing visible enough, which precludes the education of the population and with it, the effective integration of the elderly.

32. In this sense, there is a difference in the historical treatment of the elderly by the international human rights system in relation to other vulnerable populations. For boys,girls and adolescents, women, indigenous communities and persons with disabilities, the binding instrument have been driven by the international legislator in a vertically descending order; in the case of the elderly, however, it seems that the awareness of the need for international regulation and a regulatory framework base has rather been ascending, from the motivation of the bases or regional human rights systems, which are an entirely new concept in their identity and development.

33. Moreover, as noted by the General Assembly in its resolution 67/139, the efforts of Governments, relevant bodies of the United Nations system and civil society, including non-governmental organizations and the private sector, to enhance cooperation and integration and increase awareness of issues of the elderly since the adoption of the Plans of Action of Vienna (1982) and Madrid (2002) have not been sufficient to promote opportunities for elderly persons or their full and effective participation in economic, social, cultural and political life.

IV. Preliminary considerations of the Independent Expert

34. To fulfil the mandate entrusted to her, the Independent Expert has chosen a comprehensive approach to ageing, encompassing work in the international legal and policy areas. As a precondition to assessing implementation gaps and best practices, the Independent Expert contemplates outlining the specific rights of older persons, whereby she relies on the traditional classification of human rights.

35. The civil rights of older persons include the right to equality and non-discrimination on grounds of age, which requires adopting special measures of positive reinforcement to promote awareness. Deriving from the rights to life and to a dignified death is the prohibition of imprisonment for older persons and of death penalty for the elderly. Moreover, the rights to physical, mental and emotional integrity require the implementation of legislative measures to ensure proper treatment for older persons and penalties for physical, psychological and patrimonial abuse and neglect.

36. The right to legal personality and capacity involves the recognition of autonomy; the ability to exercise rights and civil obligations; the need to grant the necessary authorizations to act on their behalf; and to distinguish between decision-making capacity and competence in health, and that only a court order may limit their legal capacity.

37. With regard to elderly women, in addition to the elimination of all forms of discrimination on grounds of age, there is a need to ensure the full recognition of and respect for their rights, including the prevention of all forms of violence, the abolition of widowhood rites and other harmful traditional practices that may affect the integrity of

elderly women, the protection of elderly women living in rural areas, social security, and the protection of property and possession rights of widows.

38. The right to proper (non-violent) treatment, the protection of the extended family systems, and gender and generational equality are central aspects to the protection of the rights of indigenous elderly persons.

39. The political rights of older persons include the right to participate in the social, cultural and political life of the community, which entails the right to actively participate in the formulation and implementation of legislative measures and public policies that directly affect their rights, including policies on ageing, social development and strategies for poverty reduction, as well as the right to association and the right to receive government support through legal or economic measures. There is also a need to promote intergenerational volunteering.

40. The social rights of older persons can be classified into three groups, allowing for a system of integrated social protection in order to promote quality of life and well-being.

41. First, the right to income security contemplates the inclusion of minimum standards for the areas covered by the right to an adequate standard of living; fundamental principles that should guide social policies with an age and welfare perspective in the context of ageing. It also involves prescribing the right to benefit from social security and other forms of social protection during old age and in the event of retirement, widowhood, disability or other situations of involuntary loss of livelihood, as well as equal conditions of retirement for men and women and the prohibition that government laws reduce retirement benefits.

42. Second, the right to improve functional health entails the exercise of the right to health and the right to the highest attainable standard of physical and mental health, without discrimination and with full respect for the dignity and autonomy of older persons. It requires considering preventive and restorative health (primary care and rehabilitation services); the right to provide informed and free consent prior to any medical treatment; sheltered accommodation; the promotion of preferential access to medicines in the case of age-related diseases; and financial and technical support for home care and alternative care in the families, as well as palliative care for terminal patients.

43. Third, Governments should furthermore promote active policies to eradicate illiteracy (with emphasis on women), and to facilitate the active participation of elderly persons in cultural activities and education programmes that allow them to pass on their knowledge, culture and spiritual values as part of the right of older persons to a continuous and multi-specialty education in public and private institutions from the standpoint of lifelong learning.

44. Another important factor regarding the independence and health of the elderly population, in particular during crisis situations, emergency evacuations or displacement arising from development, is the right to housing and to a healthy environment. Priority is assumed in the allocation of housing or land to older persons in the above-mentioned situations, and entails the right to live in a safe and healthy environment, with access to water, clean air and a pollution-free environment, and to remain in their own home for as long as possible, according to their needs and will.

45. The right to work includes the right of older persons to work and have access to income-generating activities; equal treatment and opportunities in salaries, working conditions, vocational guidance and training, and job placement; and freedom of association without discrimination on grounds of age. It also requires the establishment of employment policies that promote the participation or return to the labour market of elderly workers, as well as legal reforms and economic incentives that allow the employment of older persons after retirement age, according to their ability, experience and preferences,

including such measures as the gradual reduction of working hours, part-time work and flexible schedules, and the dissemination of information on the rights and benefits of retirement.

46. With regard to procedural guarantees for older persons, access to justice is central, as its absence results in various forms of discrimination and everyday obstacles. In particular, exceptional care must be taken when responding to legal complaints relating to the provision of benefits to older persons or in the event of widowhood.

V. Conclusion

47. **The Independent Expert aims to respond to the expectations of numerous individuals and organizations with regard to her work on the human rights of older persons, as outlined by the Human Rights Council in its resolution 24/20. To that end, she looks forward to engaging in constructive and fruitful cooperation with diverse stakeholders in all regions. She emphasizes her desire for constructive engagement with the States Members of the United Nations, and reiterates the importance of an inclusive and all-encompassing approach in the discharge of her mandate. She particularly notes the central role of non-governmental organizations, including in providing her with information and engaging with and assisting her as she fulfils her mandate.**